92-1291

CASE NO.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

ERNEST P. FROHLICH,
PETITIONER,

VS.

THE STATE OF ARIZONA,
RESPONDENT.

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE PIMA COUNTY CONSOLIDATED JUSTICE
COURT FOR THE STATE OF ARIZONA

PETITION FOR WRIT OF CERTIORARI

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pro-per

56 pp

QUESTIONS PRESENTED FOR REVIEW

1. CAN THE LOWER COURTS ENFORCE AND UPHOLD A CONVICTION WHILE OPENLY AND BLATANTLY VIOLATING PROPER SEARCH AND SEIZURE, PURSUANT TO THE EXCLUSIONARY RULE, THE MIRANDA DOCTRINE?

2. CAN A LOWER COURT DENY A MOTION TO SUPPRESS EVIDENCE OBTAINED IN DIRECT VIOLATION OF THE EXCLUSIONARY RULE, THE MIRANDA DOCTRINE, AND USE THAT TAINTED EVIDENCE TO GAIN A CONVICTION, AND THEN ENFORCE AND UPHOLD THAT CONVICTION?

3. CAN THE LOWER COURTS FORCE INADEQUATE COUNSEL UPON AN ACCUSED PERSON, WHEN HE HAS TIMELY OBJECTED AND DEMANDED COUNSEL OF CHOICE, AND THEN UPHOLD THAT CONVICTION?

4. CAN THE LOWER COURTS, WITH JUDICIAL KNOWLEDGE, CHARGE AND CONVICT A PERSON WHILE OPENLY AND BLATANTLY VIOLATING AND DENYING DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW?

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ARIZONA REVISED STATUTE 28-181

ARIZONA REVISED STATUTE 28-1053

ARIZONA RULES OF THE COURT RULES OF CRIMINAL PROCEDURE 26.10

ARIZONA RULES OF THE COURT RULES OF CRIMINAL PROCEDURE 26.11

ARIZONA RULES OF THE COURT RULES OF CRIMINAL PROCEDURE 30.3

ARIZONA RULES OF THE COURT RULES OF CRIMINAL PROCEDURE 31.10

28 U.S.C. 1443 CIVIL RIGHTS CASES

LIST OF ALL CHARACTERS IN THIS CASE

PETITIONER/ACCUSED ..... ERNEST FROHLICH

JUDGES IN THIS CASE

ARRAIGNMENT ..... HON JUDGE GIBSON

MOTION HEARING ..... HON JUDGE GIRARD

TRIAL JUDGE..... HON JUDGE DONFELD

ATTORNEYS

PROSECUTOR..... MS. WANDA DAY

COURT APPOINTED COUNSEL .. MR. DAVID BRUCE

WITNESS FOR PROSECUTOR

ARRESTING OFFICER ..... MR. MADDEN

ASSISTING ON ARREST..... MR. MANNING

TRANSPORTING OFFICER ..... MR. RANKIN

OTHER OFFICERS IN ARREST REPORTS

JAIL OFFICER ..... MR. STREET

JAIL OFFICER ..... MR. HECKLER

JAIL OFFICER..... MR. SHARP

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PETITION FOR WRIT OF CERTIORARI

PETITIONER ERNEST FROHLICH RESPECFULLY ASKS THAT A WRIT OF CERTIORARI BE ISSUED TO REVIEW THE JUDGMENT OF ARIZONA SUPREME COURT OF APPEALS ENTERED ON AUGUST 10, 1992.

CITATION OF OPINION

ON MAY 8, 1992, A PETITION FOR REVIEW WAS FILED WITH THE ARIZONA SUPREME COURT UNDER CR-92-0213-PR, HEREIN EXIBIT O, PAGE 25 OF APPENDIX. THE ORDER OF THE ARIZONA SUPREME COURT WAS A PETITION FOR REVIEW, DENIED ON AUGUST 10, 1992. ON AUGUST 24, 1992, A MOTION FOR RECONSIDERATION WAS FILED WITH THE ARIZONA SUPREME COURT, ON SEPTEMBER 10, 1992, THE CLERK OF THE ARIZONA SUPREME COURT RESPONDED UNDER RULE 31.18 OF THE ARIZONA RULES OF CRIMINAL PROCEDURE, CONSEQUENTLY "YOUR DOCUMENT SHALL NOT BE FILED IN THIS CASE, NOR PROCESSED." EXHIBIT P, PAGE 26 OF APPENDIX. THE PETITIONER CITES THE 4TH, 5TH AND 6TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AS AUTHORITY FOR WHY THIS COURT HAS JURISDICTION TO HEAR HIS CASE. UNDER TITLE 28 SEC 1443, PETITIONER IS NOW REQUESTING THIS HONORABLE COURT, THE LAST COURT OF RESORT, TO

USE ITS DISCRETIONARY JURISDICTION TO REVIEW THIS ONGOING ACTIVE CASE FOR THE FOLLOWING REASONS:

(1) CONSTITUTIONAL RIGHTS VIOLATIONS BY THE LOWER COURTS .

(2) THE FACT THAT NO ARIZONA APPELLATE COURTS WILL RULE ON THE CONSTITUTIONAL RIGHTS VIOLATIONS.

(3) ALL OF THE QUESTIONS PRESENTED ARE SPECIAL AND IMPORTANT CONSTITUTIONAL PROVISIONAL ISSUES AND MUST BE ADDRESSED, AND THAT'S THE REASON FOR REQUESTING THE GRANTING OF THIS WRIT.

THE COURT HAS JURISDICTION IN THIS CASE UNDER TITLE 28, UNITED STATES CODE, 1443 CIVIL RIGHTS CASES.

ANY OF THE FOLLOWING CIVIL ACTIONS OR CRIMINAL PROSECUTIONS, COMMENCED IN A STATE COURT MAY BE REMOVED BY THE DEFENDANT TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT AND DIVISION EMBRACING THE PLACE WHEREIN IT IS PENDING.

1. AGAINST ANY PERSON WHO IS DENIED OR CANNOT ENFORCE IN THE COURT OF SUCH STATE A RIGHT UNDER ANY LAW PROVIDING FOR THE EQUAL CIVIL RIGHTS OF CITIZENS OF THE UNITED STATES, OR OF ALL PERSONS WITHIN THE JURISDICTION THEREOF;

2. FOR ANY ACT UNDER COLOR OF AUTHORITY DERIVED FROM ANY LAW PROVIDING FOR EQUAL RIGHTS, OR FOR REFUSING TO DO ANY ACT ON THE GROUND THAT IT WOULD BE INCONSISTENT WITH SUCH LAW.

STATEMENT OF CASE

ON THE EVENING OF MAY 25, 1990 AT APPROX. 8:00 P.M. ON KINNEY ROAD, PASSING THROUGH TUCSON MOUNTAIN PARK IN PIMA COUNTY, ARIZONA, PETITIONER WAS STOPPED BY RANGER KEVIN W. MADDEN, EMPLOYED BY THE PIMA COUNTY PARKS AND RECREATION DEPARTMENT. IT'S TO BE NOTED THAT THIS IS A TWO LANE, POSTED NARROW, HILLY, DIPPY, WINDING AND MOUNTAINOUS PUBLIC HIGHWAY/ RIGHT OF WAY. (ALONG THAT SECTION OF COUNTY ROAD IT'S ONLY TEN FEET FROM THE CENTER LINE TO THE EDGE OF THE ROAD, WITH ONLY AN EIGHT-INCH SHOULDER. THERE ARE FEW PLACES TO PULL OFF THIS ROAD WITHOUT BEING IN THORNY BUSHES AND DESERT CACTI. THE PARK SERVICES HAS PURPOSELY PLANTED CACTUS AND DRIVEN STEEL POSTS ALONG BOTH SIDES OF THE ROAD TO STOP PEOPLE FROM PULLING OFF THE ROAD. A NORMAL PIMA COUNTY ROAD IS 12.5 FEET WIDE WITH AN 8-FOOT SHOULDER , WHICH THIS ROAD DOES NOT HAVE.) THE APPELLANT

DEMANDED TO KNOW THE REASON FOR THE STOP BECAUSE WE WERE THE ONLY CARS ON THE ROAD; THE RANGER AT FIRST REFUSED TO RESPOND. (APNDX. R, Pg. 34 T.T. 50, 1-6) THE PETITIONER, HAVING DONE NOTHING WRONG AND KNOWING THE RANGER HAD NO PROBABLE CAUSE TO STOP, INFORMED THE OFFICER OF THAT FACT. PETITIONER ASKED THE RANGER HIS INTENT AND PROBABLE CAUSE FOR THE STOP. THE RANGER REFUSED TO RESPOND WITH HIS REASON FOR THE STOP, SO THE PETITIONER THEN DEMANDED ALL OF HIS RIGHTS AND PLACED INTO EFFECT THE EXCLUSIONARY RULE. (APNDX. EX. R, Pg. 36-37 T.T. 75, 15-24) THE RANGER THEN FINALLY RESPONDED WITH "YOU RAN OFF THE ROAD, AND YOU WEAVED ACROSS THE CENTER LINE TWICE."

PETITIONER DENIED THE ALLEGATION AND CHARGE, AND ASKED THE RANGER IF HE WAS UNDER ARREST. THE RANGER'S RESPONSE WAS "NO". NOT MORE THAN A FEW MOMENTS LATER, WITHOUT ANY

VERBAL WARNING OR REASON, THE RANGER ABRUPTLY JERKED THE PETITIONER'S CAR DOOR OPEN SAYING "GET OUT OF THE CAR; YOU'RE UNDER ARREST," AND THE PETITIONER WAS PHYSICALLY AND MALICIOUSLY DRAGGED FROM THE CAR AND HANDCUFFED.

PETITIONER DURING STOP/ARREST, SEARCH AND SEIZURE AND AFTER ALLEGEDLY BEING MIRANDIZED, AGAIN INVOKED HIS RIGHTS UNDER THE EXCLUSIONARY RULE, (APNDX. Pg. 29/30 M.T. Pg. 19, 10-21) AND DEMANDED TO BE TAKEN BEFORE A MAGISTRATE, IN ACCORDANCE WITH A.R.S. 28-1053 (APNDX- EX. U Pg. 48-50). HE WAS REFUSED THAT RIGHT. WHEN A SECOND RANGER APPEARED, THE PETITIONER ASKED SEVERAL TIMES FOR BOTH THEIR NAMES AND BADGE NUMBERS. THE ONLY RESPONSE HE GOT FROM EITHER PARK RANGER WAS "EXERCISE YOUR RIGHT AND SHUT UP."

PETITIONER WAS THEN TRANSPORTED BY PIMA COUNTY SHERIFF'S DEPUTY RANKEN, TO PRETRIAL

SERVICES AT THE PIMA COUNTY JAIL IN TUCSON WHERE HE WAS THEN CHARGED WITH D.U.I AND SIX OTHER FALSE/STACKED CHARGES. PETITIONER WAS DENIED OTHER RIGHTS, LIKE THE USE OF A PHONE AND RIGHT TO COUNSEL, WHICH HAD BEEN CONSISTENTLY DEMANDED AT ALL TIMES. (MIRANDA DOCTRINE/ EXCLUSIONARY RULE).

RANGER MADDEN CAME TO GIVE AN INTOXILYZER TEST. THE PETITIONER INFORMED THE RANGER THAT HE'D TAKE THE TEST AS SOON AS HE HAD COUNSEL; THE RANGER REFUSED TO ALLOW ANY COUNSEL (APNDX. C, [b] Pg. 3 & 4) UNTIL AFTER THE TEST, IN DIRECT VIOLATION OF PETITIONER'S RIGHTS. (APNDX. Q Pg. 31 H.T. 22, 4-6) and [KUNZLER V. PIMA COUNTY, 154 AZ 568, 744 P.2nd 669 (1987).]

PETITIONER AT PRE-TRIAL SERVICES WAS TOLD THAT HE WOULD HAVE TO SIGN THE CITATIONS. THE PETITIONER AGAIN STATED HE NEEDED COUNSEL, AND WAS AGAIN DENIED THAT RIGHT. [ARS 28-1053]

AT THE JAIL DURING BOOKING, THE OFFICERS

STATED "WE NEED YOUR FINGERPRINTS," AND WHEN THE PETITIONER OBJECTED PURSUANT TO THE DAVIS vs. MISSISSIPPI DOCTRINE, HE WAS MALICIOUSLY ASSAULTED BY RANGER MADDEN, OFFICER STREET, OFFICER HECKLER AND OFFICER SHARP (APNDX. EX. X, PG. 52-55) OF THE PIMA COUNTY JAIL. HE WAS PHYSICALLY ABUSED AND BEATEN WITH MALICE AND FORETHOUGHT TO SURRENDER HIS FINGERPRINTS IN VIOLATION OF BOTH A JUDICIAL OFFICER'S SIGNED ORDER (PURSUANT TO DAVIS Vs. MISSISSIPPI-394 U.S. PG. 728,) and THEIR JAIL POLICY MANUAL, ID. UNIT PROCEDURES 05.05.00 #16.

ON MAY 26, 1990 AT ABOUT 4 P.M. AT THE PIMA COUNTY JAIL, VIA VIDEO CONFERENCE, THE PETITIONER WAS ALLEGEDLY ARRAIGNED. THERE IS NO TRANSCRIPT OF THAT ARRAIGNMENT. (APNDX. EX. A, Pg. 1).

ON JULY 12, 1990 IN THE JUSTICE COURT BEFORE THE HONORABLE JUDGE GIBSON, THE PETITIONER DEMANDED ALL OF HIS RIGHTS AGAIN AND WOULD NOT

WAIVE ANY OF HIS RIGHTS, INCLUDING BUT NOT LIMITED TO ASSISTANCE OF COUNSEL OF CHOICE. THE COURT RECORD IS VOID OF ANY APPLICATION FOR COUNSEL BASED UPON INDIGENCY, AS PETITIONER DID NOT QUALIFY. THE COURT SIMPLY APPOINTED COUNSEL FOR HIM AGAINST HIS WILL AND OVER HIS OBJECTIONS, IN VIOLATION OF HIS RIGHT TO DEFEND HIMSELF AND OF HIS RIGHT TO ASSISTANCE OF COUNSEL OF CHOICE. (APNDX. EX. B, Pg. 2) , (APNDX EX. D, Pg.6-7) and (APNDX. EX. Q, Pg. 28/29, M.T. Pg. 4, 5-7 & Pg. 5, 4-6).

ON AUGUST 16, 1990, THE APPELLANT FILED WITH THE PIMA COUNTY JUSTICE COURT AN ARRAIGNMENT AND PLEA FOR THE RECORD, IN WHICH HE DEMANDED HIS RIGHTS SECURED BY THE LAW OF THE LAND, THE U.S. CONSTITUTION, TO INCLUDE BUT NOT BE LIMITED TO THE RIGHT TO A 12 -MAN COMMON LAW TRAIL BY JURY.

ON SEPTEMBER 4, 1990 WITH JUDGE GIRARD PRESIDING, THE COURT RULED/FOUND THEY WOULD

ALLOW THE STOP, EVEN THOUGH THE STOP/SEARCH & SEIZURE DIDN'T COMPLY WITH AZ. STATE STATUTE OR PROBABLE CAUSE PURSUANT TO THE CARROLL et al V U.S. DOCTRINE, OR THE DELAWARE V. PROUSE DOCTRINE (APNDX EX. T [A.R.S. 28-161] Pg. 47) (APNDX. EX. V [A.R.S. 13-3884] Pg. 50). THE COURT FURTHER RULED/FOUND THAT THE PETITIONER'S MIRANDA RIGHTS WERE NOT VIOLATED. THE COURT BASED THAT ARBITRARY RULING UPON THE PREMISE THAT THE PETITIONER DIDN'T PROPERLY ASK FOR COUNSEL. (M.T. Pg. 64, 7-13).

ON THE DAY OF THE TRIAL, SEPTEMBER 11, 1990 WITH TRIAL JUDGE DONFELD PRESIDING, THE SUBJECT OF A WAIVER OF MIRANDA RIGHTS WAS AGAIN ADDRESSED, AND DENIED, BY THE COURT. (APNDX. EX. R, Pg. 42/43/44 T.T. Pg. 105, 23-25, & Pg. 106, 1-13). DURING TRIAL, A WITNESS FOR THE DEFENSE WAS CALLED BY THE COURT APPOINTED COUNSEL. COUNSEL CLAIMS TO HAVE SUBPOENED THE WITNESS BUT HAD IN FACT FAILED TO DO SO, THEREBY DENYING

THE ACCUSED HIS RIGHT TO A WITNESS IN HIS BEHALF. HAD PETITIONER BEEN ALLOWED THE RIGHT TO DEFEND HIMSELF AS HE'D ORIGINALLY DEMANDED (LEGAL RIGHT), THE WITNESS IN MY BEHALF WOULD'VE APPEARED BECAUSE HE WOULD'VE BEEN PROPERLY AND TIMELY SUBPOENED BY THE PETITIONER HIMSELF. AGAIN, COURT APPOINTED COUNSEL PROVED HIMSELF TO BE INEFFECTIVE AND NOT WORKING IN THE CLIENT'S BEST INTERESTS. ON THIS SAME DATE AS A RESULT OF THE NUMEROUS VIOLATIONS OF DUE PROCESS, I WAS TRIED BY A SIX-MAN ADVISORY PANEL, FOUND GUILTY AND WAS CONVICTED OF DRIVING UNDER THE INFLUENCE. THE PETITIONER THEN FILED FOR A POST-CONVICTION RELIEF OF THE JUDGMENT AND SENTENCE, PURSUANT TO RULE 32, FOR THE NUMEROUS VIOLATIONS OF DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW.

PETITONER HAS FILED MANY MOTIONS AT EACH AND EVERY STEP OF EVERY PROCEEDING, AND THE COURT HAS DENIED EACH AND EVERY MOTION AT EACH

AND EVERY STEP, CONSISTENTLY WITHOUT FAIL EACH AND EVERY DEMAND FOR AND REQUESTS FOR TRIAL DE NOVO, DUE PROCESS, APPEAL BRIEFS, MOTION HEARINGS, ORAL ARGUMENTS, YOU NAME IT, WERE DENIED BY THE COURT, EVEN IN VIOLATION OF THEIR OWN COURT ORDERS. (APNDX Y & Z, Pg. 55-58). APPEALS FILED WITH SUPERIOUR COURT, COURT OF APPEALS DIVISION 2, THE ARIZONA STATE SUPREME COURT, WERE ALL ALSO DENIED.

THIS PETITIONER IS NOW FORCED, BECAUSE OF SUBSTANTIAL DAMAGE (i.e. FINES/LOSS OF PROPERTY, CRIMINAL RECORD, INCARCERATION/LOSS OF FREEDOM) CAUSED HIM BY THE DENIAL OF HIS CONSTITUTIONALLY PROTECTED RIGHTS, TO APPEAL THIS CASE TO THE SUPREME COURT OF THE UNITED STATES, FOR REDRESS OF GRIEVANCE.

ARGUMENT

I.

THE COURT SHOULD REVIEW BECAUSE OF THE CONSTITUTIONAL RIGHTS VIOLATIONS OF THE EXCLUSIONARY RULE.

NO FOURTH AMENDMENT WARRANT AND NO PROBABLE CAUSE TO STOP.

THE LOWER COURTS DID ERR WHEN THEY RULED THAT THERE WAS PROBABLE CAUSE TO STOP. THERE WAS, IN FACT, NO EVIDENCE IN SUPPORT OF ARTICULABLE PROBABLE CAUSE IN ACCORDANCE WITH (DELAWARE V. PROUSE 440 U.S. 648, 1979), NOR ANY BREACH OF THE PEACE IN ACCORDANCE WITH (CARROLL ET AL. vs UNITED STATES 267 U.S. 132-175) Pg. 137 "NOT ONLY DOES A MISDEMEANOR HAVE TO BE COMMITTED IN THE PRESENCE OF THE OFFICER, BUT IN ADDITION, IT MUST BE A BREACH OF THE PEACE. STATE V. LUTZ SUPRA."

THE PARK RANGER DIDN'T HAVE ANY ARTICULABLE PROBABLE CAUSE TO STOP FOR THE FOLLOWING REASONS: MADDEN'S WRITTEN REPORTS AND HIS TESTIMONY ON THE WITNESS STAND ALLEGE THAT THE APPELLANT WENT OFF THE ROAD AND THEN ABRUPTLY CORRECTED. AT THE MATERIAL HEARING, HE STATED HE DIDN'T RECALL SEEING ANYTHING COME OUT FROM UNDERNEATH THE CAR EVEN THOUGH THERE IS NO SHOULDER, JUST DIRT, GRASS AND DESERT BRUSH. (APNDX. EX. Q Pg. 29, H.T. Pg.11 line13-15). WITH THAT STATEMENT, HE THEREBY FAILED TO SHOW ANY EVIDENCE OF THAT ALLEGED MOVEMENT. MADDEN'S REPORT STATED THAT THE APPELLANT CROSSED THE CENTER LINE JUST A SHORT WAY DOWN THE ROAD WITH JUST THE LEFT WHEELS OF THE CAR (APNDX. EX. R, Pg. 35,36 T.T. Pg. 68, line 19-25). THIS MOVEMENT IS IN COMPLIANCE WITH **A.R.S. 28-729 DRIVING *ON* ROADWAYS LANED FOR TRAFFIC**, *1. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall

not be moved from that lane until the driver first ascertained that the movement can be made with safety. THE RANGER FAILED TO SHOW OR SUBSTANTIATE THAT THE MOVEMENT WAS NOT SAFE, SO HE CREATED A REASON FOR THAT STOP. THE FOLLOWING RESPONSE MADE BY MADDEN WHEN ASKED ON CROSS AS TO HOW FAR OVER THE CENTER LINE DID THE CAR CROSS, WAS: "JUST THE WHEELS," (APNDX. EX. Q, T.T. Pg. 68, 9-25). THROUGHOUT THE HEARING AND THE TRIAL AND IN ALL THE WRITTEN REPORTS OF RANGER MADDEN, THERE WAS NO MENTION MADE THAT THE SPEED OF THE VEHICLE WAS A FACTOR. MADDEN FURTHER STATES IN HIS REPORTS AND AT TRIAL, THAT AFTER FOLLOWING THE APPELLANT ABOUT 1.5 MILES ON THIS POSTED NARROW, WINDING, HILLY ROAD WITH DIPS, MADDEN THEN PROCEEDED TO STOP THE APPELLANT WHEN HE ALLEGEDLY CROSSED THE CENTER LINE WITH JUST HIS LEFT WHEELS A SECOND TIME. THE RANGER INDICATES AT (APNDX. EX. Q, Pg.

31 H.T. 28, 14-24), (APNDX. EX. O, Pg. 32/33, H.T. 34, 17-19), (APNDX. EX R, Pg. 35, T.T. 67, 23-25), (APNDX. EX. R, Pg. 36/37 T.T. 66,1-10). THIS IS, AGAIN, A POSTED NARROW, WINDING ROAD WITH HILLS AND DIPS. THEREFORE, SOME KIND OF MOVEMENT WOULD BE EXPECTED OF A VEHICLE EVEN WITHIN ITS LANE. MADDEN'S RESPONSE TO THE QUESTION "WAS IT DARK ENOUGH ON THIS PARTICULAR NIGHT TO OBSERVE ONCOMING TRAFFIC BY JUST THE HEADLIGHTS OF THE OTHER CARS ON THE ROAD?" WAS : "YES SIR". (APNDX. EX. R, Pg. 37, T.T. 69, 1-3). THE RANGER MADE THE STATEMENT (APNDX. EX. R, Pg. 34/35, T.T. 50, 4-6) THAT "WE WERE THE ONLY VEHICLES ON THE ROAD AT THAT TIME, AND THROUGHOUT THE TRIP I DO NOT RECALL ANY VEHICLES OTHER THAN OURS." FURTHERMORE, THESE PARTICULAR MOVEMENTS WERE FIRST ASCERTAINED BY PETITIONER TO BE SAFE BEFORE THEY WERE MADE, IN COMPLETE COMPLIANCE WITH A.R.S. 28-729. THEREFORE, THERE WAS NO

ARTICULABLE PROBABLE CAUSE NOR BREACH OF THE PEACE, AND NO REASON FOR THE STOP IN THIS INSTANT CASE. THE FOLLOWING CASES ILLUSTRATE THIS POINT:

IN EDWARDS vs. STATE, 462 So 2d 581 (Fla. 4th D.C.A. 1985), THE COURT FOUND THE DEFENDANT WAS SEEN CROSSING THE CENTER LINE THREE TO SEVEN TIMES, FORCING APPROACHING VEHICLES OFF THE ROAD, AND ALMOST HITTING A BRIDGE ABUTMENT. IN EDWARDS THE COURT FOUND THAT SUCH CONDUCT INVOLVED A BREACH OF THE PEACE.

IN ROMO vs. STATE, 577 S.W. 2d 251 (Tex. CR. App1979), THE SUSPECT WAS DRIVING ERRATICALLY AT SEVENTY M.P.H. IN A FIFTY-FIVE M.P.H. ZONE. THE SUSPECT'S VEHICLE WAS WEAVING ACROSS THE CENTER LINE AND ON THE SHOULDER OF THE ROAD. THESE FACTS READILY DISTINGUISH ROMO AND EDWARDS FROM THE CASE BEFORE THIS COURT, AND NONE OF THE ABOVE VIOLATIONS FROM THESE CASES APPEAR IN THIS INSTANT CASE.

FURTHERMORE, ANY ALLEGED VIOLATIONS OF THE ARIZONA TRAFFIC CODE BY THE APPELLANT AND OBSERVED BY THE PARK RANGER WERE **CIVIL VIOLATIONS** PURSUANT TO (APNDX. EX. T. Pg. 47/48) A.R.S. 28-181, AND NOT MISDEMEANORS WITHIN THE MEANING OF (APNDX. EX. V, Pg. 50/51) A.R.S. 13-3884. ONLY AFTER THE PARK RANGER MADE AN UNLAWFUL TRAFFIC STOP, SEARCH & SEIZURE (INVESTIGATION,) AND ARREST COULD HE HAVE **ALLEGED THAT** THE APPELLANT WAS DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR. IN THIS CASE BEFORE THIS COURT, THE RECORD SHOWS THERE WAS NO FOURTH AMENDMENT WARRANT, NOR ANY ARTICULABLE REASONABLE SUSPICION NOR ANY PROBABLE CAUSE TO STOP; THERE WAS NO BREACH OF THE PEACE NOR WAS THERE A MISDEMEANOR COMMITTED; THERE WAS NO CLEAR VIOLATION OR SUSPICION FOR A PROBABLE CAUSE TO STOP. THEREFORE, THIS COURT UPON REVIEW SHOULD GRANT THIS WRIT OF CERTIORARI.

II

THE COURT SHOULD REVIEW BECAUSE OF THE DISCRETIONARY AND MIS-APPLIED RULINGS BY THE LOWER COURTS REGARDING THIS PETITIONER'S CONSTITUTIONALLY PROTECTED RIGHTS FROM THE TIME OF ARREST.

VIOLATION OF MIRANDA DOCTRINE

THE LOWER COURTS COMMITTED REVERSIBLE ERROR WHEN THEY DENIED THE APPELLANT'S MOTION TO SUPPRESS OR DISMISS FOR VIOLATION OF HIS CONSTITUTIONALLY PROTECTED RIGHTS (MIRANDA DOCTRINE). NOTE THE FOLLOWING:

RANGER MADDEN, AT THE MATERIAL HEARING WAS ASKED BY THE PROSECUTOR, MS. DAY, (SEE APNDX. EX. Q, Pg. 29/30, H.T. 19, 10-21) "DID YOU READ THE DEFENDANT HIS MIRANDA RIGHTS?" AND HIS RESPONSE WAS, "AT THAT TIME, NO, NOT UNTIL HE HAD BEEN SECURED; YES, HE WAS READ HIS MIRANDA

WARRANT AFTER WE HAD STOOD HIM UP BY THE VEHICLE". A FEW QUESTIONS LATER MS. DAY ASKED (APNDX. EX. Q, Pg. 30, H.T. 19, 19-21) "AND DID YOU ASK HIM IF HE WOULD WAIVE HIS MIRANDA RIGHTS?" THE RANGER'S RESPONSE WAS "I DID ASK THAT QUESTION AND **HE DID NOT**". YET DURING CROSS AT MATERIAL HEARING, (APNDX. EX. Q, Pg. 32, H.T. 33, 8-11) (SEE EX. X, Pg. 52-55) MADDEN ADMITTED THAT IN THE WRITTEN REPORT HE'D MADE OUT THE NIGHT OF THE ARREST, NO MENTION WAS MADE THAT THE OFFICERS HAD GIVEN THE DEFENDANT HIS MIRANDA RIGHTS. ON THE TYPED REPORT MADE THE FOLLOWING DAY, HOWEVER, IT APPEARS (APNDX. EX. X, Pg. 52-55) THE RANGER STATES SEVERAL TIMES THAT HE COULDN'T REMEMBER THE APPELLANT EVER ASKING FOR COUNSEL. (APNDX. EX. Q, Pg. 30/31, H.T. 21/22, 17-6) & (APNDX. EX. Q, Pg. 32, H.T. 30, 21). MADDEN ADMITTED THAT AT THE TIME HE ASKED THE APPELLANT TO TAKE THE BREATH TEST, (APNDX. EX. Q, Pg. 30/31, H.T. 22, 4-6) "HE INDICATED TO ME

VERBALLY OR HE REFUSED TO TAKE THE TEST, STATING THAT WE WOULD BE ILLEGALLY TAKING EVIDENCE WITHOUT AN ATTORNEY."

THE MIRANDA vs. ARIZONA DOCTRINE IS QUITE SPECIFIC, AND PLACES THE BURDEN OF THE ISSUE OF COUNSEL ON THE PLAINTIFF, NOT ON A REQUEST BY THE ACCUSED. (IN CARNLEY V. COCHRAN, 369 U.S 506, 513 (1962), IT IS STATED "IT IS SETTLED THAT WHERE THE ASSISTANCE OF COUNSEL IS A CONSTITUTIONAL REQUISITE, THE RIGHT TO BE FURNISHED COUNSEL DOES NOT DEPEND ON A REQUEST. THIS PROPOSITION APPLIES WITH EQUAL FORCE IN THE CONTEXT OF PROVIDING COUNSEL TO PROTECT AN ACCUSED'S FIFTH AMENDMENT PRIVILEGE IN THE FACE OF INTERROGATION. ALTHOUGH THE ROLE OF COUNSEL AT TRIAL DIFFERS FROM THE ROLE DURING INTERROGATION, THE DIFFERENCES ARE NOT RELEVANT TO THE QUESTION WHETHER A REQUEST IS A PREREQUISITE." MIRANDA Pg. 471: "PRESUMING WAIVER FROM A SILENT RECORD

IS IMPERMISSIBLE. THE RECORD MUST SHOW, OR THERE MUST BE AN ALLEGATION AND EVIDENCE WHICH SHOW THAT AN ACCUSED WAS OFFERED COUNSEL, BUT INTELLIGENTLY AND UNDERSTANDINGLY REJECTED THE OFFER. ANYTHING LESS IS NOT WAIVER." (MIRANDA Pg. 475).

ANOTHER QUESTION ASKED MADDEN WAS "MY SPECIFIC QUESTION IS: DO YOU HAVE ANYTHING IN WRITING THAT SAYS THE ACCUSED WAIVED COUNSEL?" THE RANGER'S RESPONSE WAS "NO". (APNDX. EX. R, Pg. 38/39, T.T. 78, 21-25.) ANOTHER QUESTION ASKED OF RANGER MADDEN: "WAS THERE ANY REASON NOT TO ALLOW THE ACCUSED TO CALL COUNSEL THAT NIGHT?" AND THE RANGER'S RESPONSE WAS "HE NEVER ASKED." (APNDX. EX. R, Pg. 38/39, T.T. 78, 24-25 and T.T. 79,1).

THE RECORD SHOWS THAT AT THE VERY BEGINNING THE APPELLANT WAS ALLEGEDLY GIVEN HIS MIRANDA RIGHTS. THE RANGER'S STATEMENT WAS **THAT APPELLANT DID NOT WAIVE THEM,**

(APNDX. EX. Q, Pg 30 H.T. 19, 19-21). THE RECORD IS VOID OF ANY WAIVER. THE JUSTICE COURT THEN COMMITTED REVERSIBLE ERROR BY DENYING AND RULING THAT THE PETITIONER'S MIRANDA RIGHTS WERE NOT VIOLATED. THE COURT BASED THAT ARBITARY RULING ON THE PREMISE THAT THE PETITIONER DID NOT PROPERLY ASK FOR COUNSEL, (APNDX. EX. Q, Pg. 33, M.T. Pg. 64, 7-13). THE APPELLANT'S MOTION TO SUPPRESS OR DISMISS FOR DENIAL OF COUNSEL AT ALL STAGES OF THE INVESTIGATION WAS DENIED. THE LOWER COURTS FURTHER VIOLATED THE ACCUSED'S RIGHTS BY USING THE DENIAL TO TAKE THE INTOXILYZER WITHOUT COUNSEL, WHICH WAS USED AS EVIDENCE AGAINST HIM AT TRIAL. THE STATE'S OWN CASES SHOW IN (KUNZLER V PIMA COUNTY, 154 AZ 568, 744 P.2nd 669, (1987)) THAT IN ALL CRIMINAL DWI PROCEEDINGS, THE DEFENDANT ALWAYS HAS THE RIGHT TO CONTACT A LAWYER BEFORE THE BREATH TEST, AS LONG AS THERE IS NO DISRUPTION OF THE

INVESTIGATION. THE REMEDY IN THIS CASE SHOULD'VE BEEN DISMISSAL, PURSUANT TO STATE V. HOLLAND 147 ARIZ. 453 (1985) McNUTT V. SUPERIOR Ct. 133 ARIZ 7, (1982).

JUDGE DONFELD DID ERR WHEN HE MADE THE STATEMENT, "WELL LET ME LAY ALL OF THAT TO REST FOR YOUR CLIENT. YOU KNOW THE LAW AS WELL AS I DO. MR. FROHLICH, LISTEN VERY CAREFULLY. THE LAW DOES NOT REQUIRE A WRITTEN WAIVER OF MIRANDA RIGHTS. (APNDX. EX. R, T.T. Pg. 42-45, T.T. 105, 23-25 and 106, 1-13) "THAT'S NUMBER ONE". -----AND THE JUDGE GOES ON TO SAY " SO MIRANDA REALLY DOESN'T APPLY IN THIS CASE."

THE APPELLANT'S RESPONSE TO THAT STATEMENT WAS "I'LL HAVE TO OBJECT ON THAT FINDING, YOUR HONOR. I BELIEVE MIRANDA DOES APPLY, BECAUSE IT'S NOT ONLY QUESTIONS AND ANSWERS, IT'S EVIDENCE, AND IN THIS CASE THEY'RE USING THAT DENIAL TO TAKE THE BREATHOLYZER WITHOUT COUNSEL AS EVIDENCE, AND THEREFORE IT

DOES FALL UNDER MIRANDA." (APNDX. EX. R, Pg. 42/43 T.T.106, 1-13). THE RECORD PLAINLY SHOWS THAT THE PETITIONER DID DEMAND COUNSEL FROM THE ONSET AND IN ADDITION, APPELLANT DEMANDED OTHER RIGHTS AND THAT MADDEN CONVENIENTLY IGNORED OR DIDN'T REMEMBER SPECIFICALLY WHICH RIGHTS THE PETITIONER HAD DEMANDED. (APNDX. EX. R, Pg. 37/38, T.T. 75, 15-24) (APNDX. EX. R, Pg. 39,/40, T.T. 79, 22-25 and Pg. 80, 1-3).

THE FACTUAL EVIDENCE IN THE RECORD CLEARLY PROVES THAT THE PETITIONER DEMANDED MANY RIGHTS INCLUDING MIRANDA AND THAT THE OFFICERS AND COURTS ERRED IN THEIR DENIALS AND RULINGS ON THESE VIOLATIONS. AS THE RECORDS AND EVIDENCE QUITE CLEARLY SHOWS THE COURTS' DISCRETIONARY DECISIONS ARE IN VIOLATION OF THE PETITIONER'S RIGHTS AND SHOULD BE REVIEWED AND THOSE ARBITRATORY AND CAPRICIOUS DISCRETIONARY DECISIONS OVERTURNED.

III.

THE COURT SHOULD REVIEW BECAUSE THE ISSUE OF RIGHT TO ASSISTANCE OF COUNSEL OF CHOICE WAS CONSISTENTLY DENIED FROM THE VERY BEGINNING.

THE PETITIONER CLEARLY AND CONSISTENTLY, FROM THE BEGINNING, RAISED THE ISSUE OF COUNSEL. FROM THE STOP/ARREST/SEARCH AND SEIZURE, THROUGH THE TRIAL AND THREE APPEALS, THE PETITIONER'S DEMANDS FOR ASSISTANCE OF COUNSEL OF CHOICE PURSUANT TO THE EXCLUSIONARY RULE (APNDX. R, Pg. 36-37, T.T. 75, 15-24) & (APNDX. R, Pg. 38, T.T. 78-79, 21-1) WERE REFUSED AND DENIED BY OFFICERS AND COURTS ALIKE. THE JUSTICE COURT COMMITTED REVERSIBLE ERROR BY APPOINTING FORCED INADEQUATE/ INEFFECTIVE COUNSEL AGAINST HIS WILL AND OVER HIS OBJECTIONS (APNDX. EX. B, Pg. 2). THIS APPELLANT DEMANDED COUNSEL OF CHOICE,

OBJECTING TIMELY AND SPECIFICALLY SEVERAL TIMES TO COURT APPOINTED COUNSEL. THE COURT DENIED MY MOTION FOR COUNSEL OF CHOICE (APNDX. EX. D, Pg. 6-7) & (APNDX. Q, M.T. Pg. 4, 5-7 & M.T. Pg. 5, 4-6). THE PETITIONER WAS AWARE THAT A "LACK OF COUNSEL OF CHOICE CAN BE CONCEIVABLY EVEN WORSE THAN NO COUNSEL AT ALL, OR HAVING TO ACCEPT COUNSEL BEHOLDEN TO ONE'S ADVERSARY" (BURGETT V. TEXAS, 389 U.S. 109). THE RECORD IS VOID OF ANY STATED REASON FOR COURT APPOINTED COUNSEL AND THE RECORD CLEARLY SHOWS THAT THIS APPELLANT DID OBJECT TO THAT COUNSEL. THIS IS NOT LIMITED TO THE FACT THAT THE APPELLANT DID NOT QUALIFY FOR INDIGENCY (JUSTICE COURT ORD. 7/12/90, APNDX. EX. B, Pg. 2) & #2 CRIMINAL LAW 641.1: "COUNSEL," IN PURVIEW OF SIXTH AMENDMENT, IS NOT NECESSARILY LIMITED TO ONLY PERSONS WHO ARE LICENSED BY SOME STATE TO PRACTICE LAW." U.S.C.A. CONST. AMEND.6.

STOCKHEIMER V U.S. 385 Fd 979 (1974) pg. 980.

THE JUSTICE COURT NOT ONLY APPOINTED **INADEQUATE AND INEFFECTIVE COUNSEL** OVER THE APPELLANT'S OBJECTION, BUT THAT COUNSEL PROVED TO BE DETRIMENTAL TO THE ACCUSED AND HIS CASE FOR THE FOLLOWING:

THE MOTION TRANSCRIPT SHOWS THAT WITNESS OFFICER RANKIN WAS NOT CALLED ON BEHALF OF THE ACCUSED TO TESTIFY AT THE MOTION HEARING, EVEN THOUGH HE'D BEEN SUBPOENAED BY THE COURT APPOINTED COUNSEL FOR THAT MOTION HEARING AND WAS PRESENT IN THE COURT ROOM. THE RECORD CLEARLY SHOWS THAT THE COURT APPOINTED COUNSEL, AT TRIAL, WAS READY TO CALL THAT WITNESS ON BEHALF OF THE ACCUSED, BUT SOMEHOW HAD FAILED TO SUBPOENA OFFICER RANKIN FOR THE TRIAL TESTIMONY. (APNDX. EX. R, Pg. 39-42, T.T. Pg. 95, 9-23 and T.T. Pg. 96, 4-15 and T.T. Pg. 100, 17-25) THEREFORE, THE ACCUSED WAS DENIED HIS ONLY EXCULPATORY WITNESS TO TESTIFY IN HIS BEHALF.

THE RECORD CLEARLY SHOWS THAT THE COURT IGNORED REPEATED REQUESTS BY THE APPELLANT FOR ASSISTANCE OF COUNSEL OF CHOICE, AS IT DENIED THE APPELLANT'S NOTICE AND DEMAND RIGHT TO COUNSEL, AND ALSO DELIBERATELY APPOINTED COUNSEL OVER THE APPELLANT'S CONTINUED OBJECTIONS. (APNDX. D, Pg 6.)

IV.

THE COURT SHOULD REVIEW BECAUSE OF THE BRAZEN INDIFFERENCE AND DEPRIVATION OF DUE PROCESS BY THE LOWER COURTS.

THE PETITIONER HAS BEEN DEPRIVED OF ALL RIGHTS WHICH ARE OF SUCH FUNDAMENTAL IMPORTANCE AS TO REQUIRE COMPLIANCE WITH THE DUE PROCESS STANDARDS OF FAIRNESS AND JUSTICE. THE LAW IS COMPRISED OF LEGAL PROCEEDINGS ACCORDING TO THOSE RULES AND PRINCIPLES WHICH HAVE BEEN ESTABLISHED IN OUR SYSTEMS OF JURISPRUDENCE FOR THE ENFORCMENT AND PROTECTION OF PRIVATE RIGHTS. DUE TO THE LIMITATION OF PAGES HEREIN, THE FOLLOWING ARE THE HIGHLIGHTS OF THE DUE PROCESS VIOLATIONS COMMITTED BY THE OFFICERS AND THE COURTS IN THIS CASE:

1. THE APPELLANT DEMANDED AT THE TIME OF THE STOP/ARREST/ SEARCH & SEIZURE A FOURTH AMENDMENT WARRANT, PROBABLE CAUSE AND

COUNSEL, AND TO BE TAKEN BEFORE A MAGISTRATE UNDER A.R.S. 28-1053 (APNDX. EX. U, Pg. 48-50); THE OFFICER REFUSED. THIS WAS A CLEAR VIOLATION OF THE EXCLUSIONARY RULE (FOURTH AMENDMENT)

2. AT THE PRETRIAL SERVICES AT THE JAIL, THE PETITIONER DEMANDED AND WAS DENIED HIS DUE PROCESS (RIGHTS) OF COUNSEL (APNDX. EX. Q, M.T. Pg. 22, 4-6), KUNZLER V PIMA COUNTY, 154 AZ 568,744 P.2nd 669(1987) IN ALL CRIMINAL DWI PROCEEDINGS, THE DEFENDANT ALWAYS HAS THE RIGHT TO CONTACT A LAWYER BEFORE THE BREATH TEST, AS LONG AS THERE IS NO DISRUPTION OF THE INVESTIGATION, AS IN THIS CASE.

3. AT ARRAIGNMENT, THE APPELLANT DEMANDED THAT THE COURTS MAKE RECORDS OF ALL PROCEEDINGS, AND THE COURTS SIMPLY REFUSED, AGAIN DENYING THIS APPELLANT DUE PROCESS (RIGHTS.) (RIGHT TO HAVE A RECORD FOR APPEAL.)

4. PETITIONER FILED 25 MOTIONS BEFORE TRIAL,

DEMANDED MOTION HEARINGS, AND DEMAND ORAL ARGUMENTS AND ALL MOTIONS SUBMITTED BY PETITIONER WERE DENIED.

5. NOTICE AND DEMAND WAS GIVEN FOR A TRIAL BY JURY (12 MAN JURY AT THE COMMON LAW); THE APPELLANT WAS ONLY ALLOWED A BENCH TRIAL WITH A SIX-MAN ADVISORY PANEL. CONVICTION WAS GAINED BY THE LOSS OF DUE PROCESS (DENIAL OF THE COURT TO HEAR MOTIONS). NO EXCULPATORY OR TANGIBLE EVIDENCE WAS EVER PRODUCED, ONLY PURJUROUS/HEARSAY TESTIMONY WAS USED (BRISCOE et al Vs. LAHUE DOCTRINE, 460 U.S. 1983).

6. JUDGMENT AND SENTENCING:

ON OCTOBER 3,1990 IN THE JUSTICE COURT, JUDGE DONFELD PRONOUNCED THE SENTENCE AND FAILED TO COMPLY WITH C.R.P. 26.10 b (2) BY NOT TAKING INTO ACCOUNT THE TIME SERVED, AND FURTHER BY IMPOSING A GREATER JAIL SENTENCE THAN IS NORMAL IN A CRIME OF THIS TYPE. HE ALSO FAILED TO COMPLY WITH C.R.P. 26.11 c, BY

NOT HANDING THE DEFENDANT A WRITTEN NOTICE OF HIS RIGHTS OF APPEAL AND THE PROCEDURE HE MUST USE, A BRAZEN VIOLATION OF THE PETITIONER'S DUE PROCESS (RIGHTS) (APNDX. EX. S, a.b. Pg. 45).

7. THE JUSTICE COURT DENIED PETITIONER DUE PROCESS BY FAILING TO FOLLOW THEIR OWN PUBLISHED RULES OF PROCEDURE WHEN ALLOWING THIS APPEAL FOR THE FOLLOWING REASONS: (TIME/LATCHES)

AS PER RULE 30.3 PREPARATION OF RECORD, THE JUSTICE COURT FAILED TO TRANSMIT THE INCOMPLETE RECORD TO THE SUPERIOR COURT WITHIN THE TIME FRAME OF THE RULE. APPELLANT FILED HIS NOTICE OF APPEAL WITH THE JUSTICE COURT ON OCTOBER 3, 1990, (APNDX. EX. I, Pg.14-15) AND AS OF NOVEMBER 29, 1990, THE RECORDS WERE STILL NOT COMPLETED. (APNDX. EX. J, Pg. 15-19.) THE COURT RECORDS WERE NOT TIMELY (WITHIN 40 DAYS) TRANSFERRED FROM THE JUSTICE COURT TO THE SUPERIOR COURT. THE SUPERIOR COURT ERRED WHEN

IT DENIED TO RULE ON THE VIOLATION OF THESE RULES AT THE PRE-TRIAL CONFERENCE (APNDX. EX. J, Pg. 15-19) AND MOTION HEARING. EIGHT MONTHS LATER, THE COURT AGAIN DENIED TO RULE ON THESE RULE VIOLATIONS FOR THE THIRD TIME, EVEN IN VIOLATION OF THEIR OWN COURT ORDERS TO PROCEED IN A TIMELY MANNER. (APNDX. EXS. Y & Z, Pg. 56-58.)

RULE 31.10 FILING OF THE RECORD-- THE CLERK OF THE APPELLATE COURT VIOLATED THIS RULE AS SHOWN BY THE FOLLOWING: THE ORDER FROM THE HON JUDGE KELLY DATED OCT. 28,1991, "IT APPEARING THAT THE TRANSCRIPTS FROM THE JUSTICE COURT WERE FILED ON AUG 8, 1991"; SINCE THE APPELLANT WAS NOT NOTIFIED THAT THE RECORD WAS COMPLETE THIS IS THEN A VIOLATION OF RULE 31.10.

8. APPELLANT DEMANDED A TRIAL DE NOVA BECAUSE OF THE LOWER COURTS' VIOLATIONS: AN INCOMPLETE RECORD, LACK OF DUE PROCESS AND VIOLATIONS OF THE RULES OF PROCEDURE. THE

COURTS AGAIN DENIED THIS MOTION AND RIGHT. (APNDX. EX. J, Pg.15-19).

9. THE PETITIONER AT EVERY STEP OF THESE PROCEEDINGS HAS DEMANDED ORAL ARGUMENT FOR ALL MOTIONS SUBMITTED IN EVERY COURT, INCLUDING THE SUPREME COURT OF THE STATE OF ARIZONA. EVERY COURT AND JUDGE REFUSED AND DENIED TO ALLOW THE PETITIONER THE RIGHT TO EXPOUND ON HIS POSITION.

10. APPEAL TO SUPERIOR COURT - THE COURT FURTHER FINDS THAT THE DECISION OF THE JUSTICE OF THE PEACE WAS NOT ILLEGAL OR AN ABUSE OF DISCRETION, THEREFORE, IT IS ORDERED THAT THE JUDGEMENT OF THE JUSTICE COURT IS AFFIRMED. (APNDX. EX. L, Pg. 20-22)

11. APPEAL TO THE COURT OF APPEAL DIVISION TWO -- DENIED. THE COURT CLAIMED: NO JURISDICTION (APNDX. EX.N Pg 23-25).

12. APPEAL TO THE ARIZONA SUPREME COURT -- DENIED. (APNDX. EX. O, Pg. 25-26).

SUMMARY OF ARGUMENTS

I.

THE COURT SHOULD REVIEW, BECAUSE THE PETITIONER SEEKS REDRESS OF GRIEVANCE FOR THE SPECIFIC DENIALS OF HIS RIGHTS DURING STOP, SEARCH AND SEIZURE.

THE FACTS AND THE EVIDENCE IN THIS BRIEF SHOW THAT THE PETITIONER DEMANDED SPECIFIC RIGHTS UNDER THE EXCLUSIONARY RULE, (MIRANDA DOCTRINE), THAT THE OFFICERS AND THE COURTS SIMPLY IGNORED AND DENIED. THEY THEREBY ERRED WHEN MAKING THEIR RULINGS IN VIOLATION OF THOSE RIGHTS DURING STOP, SEARCH AND SEIZURE.

"THE CLAIM AND EXERCISE OF A CONSTITUTIONAL RIGHT CANNOT BE CONVERTED INTO A CRIME". (MILLER V. U.S. 230 F 486 AT 489).

II.

THE COURT SHOULD REVIEW, BECAUSE THE PETITIONER SEEKS REDRESS OF GRIEVANCE FOR VIOLATIONS OF HIS CONSTITUTIONALLY SECURED RIGHTS BY THE ARBITRARY RULINGS OF THE LOWER COURTS.

THE FACTS AND EVIDENCE IN THIS BRIEF PLAINLY SHOW THAT THE LOWER COURTS DID ERR WHEN RULING THAT THERE WERE NO VIOLATIONS OF THE PETITIONER'S RIGHTS PURSUANT TO THE MIRANDA DOCTRINE.

III.

THE COURTS SHOULD REVIEW, BECAUSE THE PETITIONER SEEKS REDRESS OF GRIEVANCE FOR THE DENIAL OF HIS RIGHT TO ASSISTANCE OF COUNSEL OF CHOICE BY THE LOWER COURTS, A RIGHT THAT THE PETITIONER HAD DEMANDED FROM THE ONSET.

THE EVIDENCE AND THE FACTS IN THE RECORD

SUBSTANTIATE THAT THE COURT, THE PROSECUTOR AND THE COURT APPOINTED COUNSEL WITH JUDICIAL KNOWLEDGE IGNORED THE PETITIONER'S DEMANDS FOR ASSISTANCE OF COUNSEL OF CHOICE IN THIS CRIMINAL ACTION FROM THE BEGINNING, AND THAT THOSE RIGHTS WERE DENIED BY ALL THE LOWER COURTS. "The privilege against self-incrimination is neither accorded to the passive resistant, nor the person who is ignorant of his rights, nor to one indifferent thereto. It is a fighting clause. Its benefits can be retained only by sustained combat. It cannot be claimed by attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person" (JOHNSON V. U.S. FED. 76 SUPP 538 pg. 540).

IV.

THIS COURT SHOULD REVIEW BECAUSE THE PETITIONER SEEKS REDRESS OF GRIEVANCE FOR ARBITRARY AND BRAZEN DENIALS OF DUE PROCESS BY THE LOWER COURTS.

PETITIONER HAS DEMANDED ALL OF HIS RIGHTS AT ALL TIMES. THE RECORD PLAINLY SHOWS THE JUSTICE COURT USED ITS DISCRETIONARY POWER TO BRAZENLY DENY AND SIDESTEP THE PETITIONER'S RIGHTS AND COURT RULES, CLEAR VIOLATIONS OF DUE PROCESS, EQUAL ACCESS/EQUAL PROTECTION UNDER THE LAW.

IN CONCLUSION

THE COURT SHOULD REVIEW BECAUSE THIS BRIEF ESTABLISHES THE GROSS VIOLATION OF CONSTITUTIONALLY PROTECTED RIGHTS.

SEARCH AND SEIZURE --- PURSUANT TO THE EXCLUSIONARY RULE -- THE STOP, SEARCH AND SEIZURE WAS ILLEGAL. THE EVIDENCE CLEARLY SHOWS THERE WAS NO PROBABLE CAUSE AT THE INITIAL STOP. THE TESTIMONY SHOWS THE ROAD IS NARROW, HILLY, DIPPY, AND MOUNTAINOUS, APPRECIABLY NARROWER THAN A NORMAL PIMA COUNTY ROAD, AND THAT SOME TYPE OF MOVEMENT WOULD BE EXPECTED WITHIN ONE'S LANE ON THIS TYPE OF ROAD. IF THE STOP AND ARREST HAD BEEN DONE IN THE NAME OF "WE THE PEOPLE" PURSUANT TO STATUTE, THE RANGER WOULD NOT HAVE IGNORED BASIC PROCEDURES FOR A D.U.I. INVESTIGATION, AS SHOWS IN THE RECORD. THERE WOULD'VE BEEN NO VIOLATIONS OF CONSTITUTIONAL RIGHTS. COUNSEL

WOULD'VE BEEN PROVIDED PURSUANT TO THE STATE'S OWN COURT RULINGS (KUNZLER VS. PIMA COUNTY) FROM THE ONSET, AS DEMANDED, AND THE ACCUSED WOULD'VE BEEN TAKEN BEFORE A MAGISTRATE, AS DEMANDED, AND AS THE LAW REQUIRES. HOWEVER, THE ACTIONS TAKEN WERE NOT STATUTORY, (e.g. "KEEP QUIET, SIGN HERE, NO RIGHTS, DO AS I SAY"), OUTSIDE OF THEIR RANGER'S POLICY MANUAL, IN VIOLATION OF INDIVIDUAL RIGHTS. THE PETITIONER CONFRONTED THE OFFICER'S SENSE OF AUTHORITY BY DEMANDING HIS RIGHTS... OFFICER MADDEN DID NOT ACT, HE REACTED BY STACKING CHARGES, CONVERTING RIGHTS INTO CRIMES, ACCUSING THE PETITIONER OF DISORDERLY CONDUCT, RESISTING ARREST AND D.U.I., ALL WHICH WERE LATER DISMISSED BY THE LOWER COURTS, EXCEPT THE D.U.I. MADDEN WAS NOT ACTING IN HIS OFFICIAL CAPACITY TO PROTECT THE PARK, BUT INSTEAD ACTED INDISCRIMINATELY WHEN HE MADE THE STOP WITHOUT PROBABLE CAUSE ON A PUBLIC

HIGHWAY. HE WAS NOT ACTING ON BEHALF OF THE HEALTH, SAFETY OR WELFARE OF "WE THE PEOPLE." AS THE RECORD SHOWS, WE WERE NOT IN THE PARK, THERE WAS NO TRAFFIC IN THE AREA OR PRIVATE CITIZENS INVOLVED, NOR A BREACH OF THE PEACE.

EXCLUSIONARY RULE - MIRANDA DOCTRINE

THE RECORD PLAINLY SHOWS THE PETITIONER DEMANDED RIGHTS UNDER MIRANDA. MIRANDA IS THE CASE LAW THAT BACKS THE EXCLUSIONARY RULE, AND VIOLATIONS OF THE EXCLUSIONARY RULE ARE VIOLATIONS OF THE PETITIONER'S CONSTITUTIONALLY PROTECTED 4TH, 5TH AND 6TH AMENDMENT RIGHTS.

IN EARLY NOVEMBER 1992, THE U.S. SUPREME COURT OF APPEALS UPHELD A 1986 DECISION IN THE COOPER CASE REGARDING MIRANDA/RIGHTS. IN THAT TUCSON, ARIZONA CASE, THE APPEALS COURT CALLED IT "AN EXAMPLE OF OFFICIALS WHO DELIBERATELY CHOOSE TO IGNORE THE LAW AND THE CONSTITUTION IN FAVOR OF THEIR OWN METHODS."

"FOR VICTIMS CAUGHT IN THEIR SNARE," THE APPEALS COURT SAID, "UNLESS ENFORCED, THE CONSTITUTION OF THE U.S. BECOMES A USELESS PIECE OF PAPER." PIMA COUNTY (ARIZONA) SHERIFF CLARENCE DUPNIK ON NOVEMBER 2, 1992 WAS QUOTED IN THE TUCSON CITIZEN NEWSPAPER AS SAYING THAT "FOR THE SAKE OF PUBLIC SAFETY, ON RARE OCCASIONS DEPUTIES HAVE IGNORED SUSPECT'S REQUESTS FOR A LAWYER AND THEIR RIGHT TO REMAIN SILENT." THE APPELLATE COURT RULED THAT THE INFORMATION GATHERED DURING QUESTIONING COULD BE USED AT THE TRAIL, AND WAS INTENDED FOR THAT PURPOSE.

WITH THIS APPELLANT'S REQUESTS TO SEE A LAWYER HAVING BEEN DISREGARDED, IT SHOWS THAT A PRISONER IS THEN IN A TOTALITARIAN NIGHTMARE WHERE THE POLICE DISREGARD THE CONSTITUTION, AND INSTEAD FOLLOW THEIR OWN SPUR-OF-THE-MOMENT JUDGMENT, INDISCRIMINATELY TREATING SUSPECTS ACCORDING TO THEIR OWN WHIMS. UP

UNITL THE COOPER CASE, THE ISSUE OF THE MIRANDA DOCTRINE WAS NEVER RAISED IN TUCSON (SAYS SHERIFF DUPNICK), BUT THAT'S NOT TRUE. THIS PETITIONER KNOWS MIRANDA IS NEVER RAISED BECAUSE OF THE LONG LEGAL, UPHILL BATTLE AND DENIALS FROM OUR COURTS TO HEAR AND RULE ON THOSE ISSUES, (TWO YEARS IN MY CASE), AND MOST INDIVIDUALS DON'T KNOW HOW TO MOVE FORWARD TO PROTECT AND (DEMAND) THEIR RIGHTS. CONSEQUENTLY, THE QUESTIONS (LIKE MIRANDA RIGHTS) ALMOST NEVER ARISE.

IN THIS CASE THE COURTS HAD JUDICIAL KNOWLEDGE OF THE APPELLANT'S RIGHTS AND CHOSE, AGAIN, TO VIOLATE THEM WITH DELIBERATE INDIFFERENCE. THIS IS JUST ANOTHER EXAMPLE OF THE ARBITRARY AND ABUSIVE USE OF POLICE POWER AND JUDICIAL INDISCRETION, EXEMPLIFYING A CAPRICIOUS ARROGANCE OF THOSE IN POWER.

IN MIRANDA AND ESCOBEDO, EVEN IF A MAN IS GUILTY, HE HAS RIGHTS. THEREFORE, ALL PEOPLE

HAVE THOSE SAME RIGHTS. WHAT GOOD ARE WORDS ON PAPER IF NO ONE ABIDES BY THEM? THOSE IN POWER MUST ABIDE BY THE RULES; TIME AFTER TIME THOSE IN POWER VIOLATE PROCEDURAL RULES. POWER CORRUPTS AND ABSOLUTE POWER CORRUPTS ABSOLUTELY. IT IS THEREFORE UP TO THE SUPREME COURT OF THE UNITED STATES TO ENSURE THAT **EVERY CITIZEN'S RIGHTS** ARE UPHELD TO THE LETTER OF THE LAW, TO INCLUDE BUT NOT BE LIMITED TO THE FOURTH, FIFTH AND SIX AMENDMENTS OF THE U. S. CONSTITUTION.

COUNSEL -- THERE WAS A BLATANT DENIAL OF COUNSEL AT THE STOP, SEARCH AND SEIZURE, AND DENIAL OF COUNSEL OF CHOICE AT ALL STAGES OF THE PROCEEDINGS, AS THE STATEMENTS MADE IN THE RECORD PLAINLY SHOW. THE COURTS ADMIT "WE DO THIS EVERY DAY." IN MY CASE THEY APPOINTED COUNSEL WHO PROVED TO BE INADEQUATE; FROM THE START THEY DENIED MY RIGHTS (i.e. WITNESSES AND TESTIMONY IN MY

BEHALF), DENIED MOTION HEARINGS AND DENIED MY RIGHT TO KNOW AND UNDERSTAND HOW AND WHY THEY WERE PROCEEDING FORWARD "BECAUSE THEY APPOINTED ME COUNSEL," EVEN IF IT WAS OVER MY OBJECTION. WHEN I, AS THE PETITIONER, OBJECTED TO COURT APPOINTED COUNSEL, THE COURTS JUST SAID "IF YOU DON'T LIKE IT, YOU CAN APPEAL IT," THEREBY CREATING A BUREAUCRATIC ADMINISTRATIVE BOONDOGGLE AGAINST ME. ONLY WHEN SOMEONE DEMANDS THEIR RIGHTS AND HAS ENOUGH KNOWLEDGE TO READ AND UNDERSTAND HOW TO APPEAL, CAN THE ARROGANCE OF THE LOWER COURTS BE BROUGHT TO LIGHT.

DUE PROCESS THE COURT CAN PLAINLY SEE FROM THE RECORD THE VIOLATIONS OF DUE PROCESS IN MY CASE.

THE POWER OF THE PROSECUTOR IS SO GREAT, THEY FEEL THEY CAN DO ANYTHING THEY WANT AT ANYTIME, AND THE COURTS BACK THEM. THEY BELIEVE THEY'RE ABOVE THE LAW, AND ARE A LAW

UNTO THEMSELVES. IF THE PROSECUTOR WAS PROPERLY PROSECUTING, IT WOULDN'T HAVE TAKEN EIGHT MONTHS TO DO WHAT THE COURT RULES SAY MUST BE DONE IN 40 DAYS. EVIDENCE IN THE RECORD PLAINLY SHOWS THAT PROSECUTORS JUST DO THINGS THE WAY THEY WANT, AND "IF YOU DON'T LIKE IT, YOU CAN APPEAL IT." WHEN I DEMANDED TO GO BEFORE A MAGISTRATE THE NIGHT OF THE ARREST, I WAS TOLD "WE DON'T DO IT THAT WAY ANYMORE."

RULES OF PROCEDURE WERE SIDE-STEPPED AND IGNORED IN THIS LONG, TWO-AND-ONE-HALF YEAR DESIRE TO PROSECUTE AND CONVICT WITHOUT ANY EVIDENCE. THE EVIDENCE IN THE RECORD SHOWS THAT THEY DID VIOLATE PETITIONER'S RIGHTS OF DUE PROCESS, AND THE ONLY WAY THEY WERE ABLE TO GAIN THE CONVICTION WAS TO DENY DUE PROCESS AND SIDESTEP ALL OF THEIR RULES OF PROCEDURE.

THERE WOULDN'T BE ANY REASON FOR A CLOSING

ARGUMENT OR APPEAL IF THE RIGHTS TO DUE PROCESS HADN'T BEEN VIOLATED OR DENIED. IT'S JUST A JOB TO THEM, NOT QUESTIONS OF RIGHTS, JURISDICTION OR DUE PROCESS. THE LAW EXISTS FOR US. IT'S THE JOB OF THE COURTS AND ITS OFFICERS TO UPHOLD THE LAW, NOT TO VIOLATE LAWS IN THEIR OWN BEHALF. EVERYTIME THEY VIOLATED THE PETITIONER'S RIGHTS, THE JUDGES WOULD SAY "IF YOU DON'T LIKE MY DECISION, YOU CAN APPEAL IT."

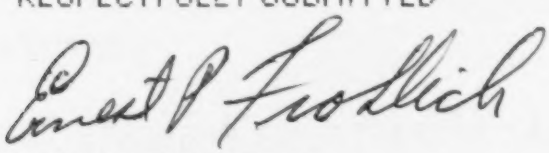
THIS APPELLANT RESPECTFULLY REQUESTS THE HONORABLE SUPREME COURT TO GRANT THIS WRIT OF CERTIORARI ON THE ERRS AND VIOLATIONS OF THE LOWER COURTS. THE COURT SHOULD REVIEW AND RULE ON THE VIOLATIONS OF MY CONSTITUTIONALLY PROTECTED RIGHTS WHICH CAUSED SUBSTANTIAL DAMAGE, AS ENUMERATED IN THIS BRIEF.

THIS PETITIONER LIVES HIS DAILY LIFE BASED UPON STARE DECISIS. IF THERE IS AN EXAMPLE WHEN

STARE DECISIS HAS ANY MEANING IT WOULD BE IN THIS CASE, AS REGARDLESS OF INNOCENCE OR GUILT, WE ALL THE HAVE RIGHTS TO DUE PROCESS.

WHEREFORE, APPELLANT PRAYS THIS COURT WILL REVIEW THIS WRIT OF CERTIORARI AND EXERCISE ITS DISCRETIONARY JURISDICTION OVER THIS MATTER.

RESPECTFULLY SUBMITTED



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